Accordingly, I must make an order setting aside the warrant of arrest but it does not follow that I ought to make any order in respect of the security the defendants have given to the plaintiffs. As I have earlier mentioned this security was a matter negotiated out of court by the parties and so it seems to me that I have no power to order the plaintiffs to return to the defendants "the security furnished by the defendants to procure the release of the said vessel for cancellation." In my view if no mutually acceptable solution can be arrived at between the parties out of court, this "security", the terms of which are not before me, must then be the subject matter of proceedings independent of the present application before me.

Warrant of arrest set aside.

Solicitors: *Drew & Napier; Donaldson & Burkinshaw.*

PUBLIC PROSECUTOR v. KARNAL SINGH

[R.Cr.J. (Ong Hock Sim J.) August 16, 1969]
[Penang — Criminal Revision No. 13 of 1969]

Criminal Law and Procedure — Case which ought to be tried by High Court — Causing hurt with sulphuric acid — Corrosive and Explosive Substances and Offensive Weapons Ordinance, 1958, s. 4 — Penal Code, s. 326 — Criminal Procedure Code (Cap. 21), s. 188.

In this case the respondent had been acquitted by the Sessions Court on a charge under section 4 of the Corrosive and Explosive Substances and Offensive Weapons Ordinance, 1958.

Held: the charge in this case should have been laid under section 326 of the Penal Code and therefore the trial was a nullity and an order would be made that the accused be recharged and a preliminary inquiry held with a view to his committal for trial in the High Court.

Cases referred to:—

(1) *Public Prosecutor* v. *Lim Kheng Peng* unreported (Penang — Criminal Appeal No. 11 of 1969).

(2) *Public Prosecutor* v. *Lee Hor Sai* [1969] 1 M.L.J. 168.

CRIMINAL REVISION.

Abu Mansor bin Ali (Deputy Public Prosecutor) for the Public Prosecutor.

Ong Hock Sim J.: In this case, due to the fact that the learned President, Sessions Court, Penang, overlooked two previous decisions by this court, the respondent was acquitted on the following charge:—

"That you jointly charged with another person still at large, on 16.11.67 at about 2.30 a.m. at N.E.B. Office, Patani Road, Butterworth, in the State of Penang, did unlawfully and maliciously use corrosive substance, to wit, sulphuric acid, for the purpose of causing hurt to one Joginder Singh s/o Mehman Singh, and that you have thereby committed an offence punishable under section 4 of the Corrosive and Explosive Substances and Offensive Weapons Ordinance No. 43/58."

The first decision I refer to is *Public Prosecutor v. Lim Kheng Peng*[1] where I varied the sentence of binding over for two years in the sum of $1,000 under section 290 of the Criminal Procedure Code to one of one year's imprisonment and six strokes of the rotan when the respondent was convicted on a charge under section 4 of the Corrosive and Explosive Substances and Offensive Weapons Ordinance, 1958, and I had occasion then to say:—

"It is lucky for him the legal department failed to distinguish, to look and examine to see whether this was a proper case for a charge under section 326 or under section 4 of the Corrosive and Explosive Substances and Offensive Weapons Ordinance.'

In that case, the respondent threw nitric acid on the face of his wife but the evidence was inconclusive although she said that these burns were all over her forehead, nose, cheeks and chin as borne out by the medical report, in which event the case is one of "grievous hurt" as defined in section 320 of the Penal Code. The other case is *Public Prosecutor v. Lee Hor Sai*,[2] where the victim, a girl, had been slashed with a knife on her face some three or four times and the respondent was convicted by the learned magistrate under section 324 of the Penal Code. In exercise of my powers of revision, I set aside the conviction there and directed that the respondent be charged under section 326 of the Penal Code, as medical evidence showed that the girl had permanent disfiguration of the face, and further ordered that a preliminary enquiry be held with a view to committing the respondent for trial in the High Court.

In this present case, the medical evidence was a little flimsy and slipshod. It does not appear to indicate just what should be the proper charge but the exhibit is very clear. The medical report says:

"On examination he had healed scars or keloid, on the face, neck, upper chest and (L) forearm.

Scars over (R) side of both chin and neck caused constractures with distortion of mouth and limiting movements of head."

I had occasion to see this victim. His mouth was hanging open and loose.

With two counsel there to assist the court, one for the accused and the other counsel on a watching brief for the victim, it is a little surprising that the case should have gone on and be concluded on a charge under section 4 of the Corrosive and Explosive Substances and Offensive Weapons Ordinance when it is clear that it was a proper case for trial under section 326 of the Penal Code. There is provision in section 188(2) of the Criminal Procedure Code for the learned president here to take appropriate action in directing the matter to be sent to the magistrate's court with a view to committal for trial

in the High Court. I read sub-section (2) of section 138 of the Criminal Procedure Code.

"(2) In any trial before a District Court in which it appears at any stage of the proceedings that from any cause the case is one which the District Court is not competent to try or one which in the opinion of such court ought to be tried by the High Court, or if before or during such trial application is made by the Public Prosecutor, the court shall stay proceedings and shall order the accused to be brought before a Police Court with a view to the committal of the accused for trial by the High Court and shall record such order on the proceedings."

The prosecuting officer, an A.S.P., has been attached to the court as ASP. Court for over ten years and I am a little shocked that he has failed to direct the attention of the learned Deputy Public Prosecutor or the learned President, Sessions Court, that the case is one which he is not competent to try.

In spite of two previous cases, as I said, mistakes and errors and oversight continue and I hope that what I am now saying would bring about more vigilance by officers concerned with the administration of justice, namely, the police, the Legal Department, the court and counsel who appear therein which would have saved the time wasted on a trial which is an obvious nullity.

I set aside, in revision, the order of acquittal on the ground that the trial is a nullity and that the learned president is without jurisdiction in the matter. I direct that a warrant of arrest be issued for the apprehension of the respondent, who seems to have conveniently disappeared after his acquittal by the learned president, so that he can be brought back to be charged under section 326 of the Penal Code and a preliminary enquiry be held with a view to committal for trial in the High Court.

Acquittal set aside.

MAHADEVAN v. ANANDARAJAN & ORS.

[O.C.J. (Abdul Hamid J.) September 5, 1969]

[Seremban — Civil Suit No. 101 of 1968]

Administrative Law — Expulsion of student from school for misconduct — Inquiry — Adequate notice not given — Failure to observe rules of natural justice — Fair opportunity to be heard.

Education — School — Student — Expulsion for misconduct — Natural justice — Fair opportunity of being heard — Education (School Discipline) Regulations, 1959, regs. 4, 8 & 10.

In this case the plaintiff applied for (i) a declaration that the order of expulsion of the plaintiff as a pupil in a school in Seremban made by the first defendant and the decision of the Board of Governors of the school confirming the expulsion were null and void and of no effect; (ii) an order that he be reinstated as a pupil of the school. He also claimed for damages and costs. The plaintiff had been dismissed by the first defendant because of alleged misconduct on several occasions. Regulation 8 of the Education (School Discipline) Regulations, 1959, provides that whenever "it appears to the satisfaction of the head teacher of any school — (a) to be necessary or desirable for the purpose of maintaining discipline or order in any school that any pupil should be suspended or expelled ..... he may by order expel him from such school." It appeared that the first defendant in this case had called the plaintiff to his office to investigate into the allegations against him and had warned him that probably he would expel him or take some action against him.

Held: (1) in the circumstances of the present case a mere warning by the first defendant that the plaintiff might probably be expelled fell short of the requirements of natural justice;

(2) the first defendant had omitted to provide adequate notice to the plaintiff to enable him to truly appreciate the exact nature and purpose of the interview and such omission had the effect of depriving the plaintiff of a fair opportunity to be heard;

(3) the plaintiff was therefore entitled to a declaration that the order of expulsion was null and void and of no effect and to an order that he be reinstated as a pupil of the school;

(4) in this case the plaintiff had not succeeded to prove the defendants' liability in damages.

Cases referred to:—

(1) *Ramesh Chandra Sahu* v. *N. Padhy* A.I.R. 1959 Orissa 196.

(2) *University of Ceylon* v. *Fernando* [1960] 1 All E.R. 631.

(3) *Hoggard* v. *Worsbrough Urban District Council* [1962] 1 All E.R. 468.

(4) *R.* v. *Senate of University of Aston* [1969] 2 All E.R. 964.

CIVIL SUIT

Dato' S.P. Seenivasagam (*J. Nadchatiram* with him) for the plaintiff.

Abdullah bin Ngah (Legal Adviser) for the defendants.

Cur. Adv. Vult.

Abdul Hamid J.: The plaintiff's claim is:—

(a) for a declaration that the order of expulsion of the plaintiff as a pupil from the King George V School, Seremban, made by the 1st defendant with effect from the 4th day of May, 1968, and the decision of the Board of Governors made on the 1st day of June, 1968, is null and void and of no effect;

(b) for an order that the plaintiff be reinstated as a pupil of the King George V School, Seremban, forthwith;

(c) damages and costs.

The 1st defendant is alleged to have unlawfully, maliciously and without any valid reasons expelled the plaintiff from the school and that the action taken by the 1st defendant was in violation of the rules of natural justice.

The facts leading to the expulsion of the plaintiff are conflicting. The following is a brief summary. The plaintiff in his evidence